In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-854

THE DEUTSCH COMPANY, METAL COMPONENTS DIVISION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 445 F. 2d 902. The decision and order of the National Labor Relations Board (Pet. App. 11-34) are reported at 178 NLRB 516.

JURISDICTION

The decision of the court of appeals was entered on June 24, 1971, and Deutsch's petition for rehearing was denied on October 8, 1971 (Pet. App. 10). The

457-678—72

petition for a writ of certiorari was filed on December 31, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly found that the employer violated Section 8(a)(1) of the National Labor Relations Act by soliciting employees to revoke authorization cards designating the union as their bargaining representative.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (29 U.S.C. 151, *et seq.*), are set out in the petition at pp. 2-3.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

In March 1968, the Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO, began an organizational drive at the Company's Metal Components Division plant in Los Angeles (Pet. App. 21). Shortly thereafter the Company's personnel director, Peter Hanly, told three employees, during their lunch break, that he had heard there was going to be a union meeting. They replied that they did not know anything about it. Hanly then asked whether it was true that the Union was paying $25 to employees for signing authorization cards. Again the employees replied that they had no knowledge (Pet. App. 27-28; Tr. 30-32,

59–60, 218–219).[1] Finally, Hanly told the employees that Company rules prohibited all solicitations on Company property at any time (Pet. App. 27; Tr. 32, 60).

On May 20, the Company mailed letters to its employees stating that those who had signed union authorization cards could revoke them by signing and mailing the enclosure (GCX 2, 3; Pet. App. 36–38). The enclosure was a stamped postcard addressed to the Board, which read (*ibid.*):

> Re: Deutsch Metal Components Division
>
> I hereby revoke my card authorizing the Shipbuilders Union to represent me.
>
> _____
> (Employee's Name)
>
> _____
> (Date)

B. THE DIVISIONS BELOW

The Board found that Personnel Director Hanly's questioning regarding the union meeting was coercive and, therefore, that it violated Section 8(a)(1) of the Act. The Board found that the Company also violated Section 8(a)(1) by maintaining an excessively broad ban on union solicitation (Pet. App. 30, 27–28). Finally, the Board found that the Company's letter of May 20, 1968, violated Section 8(a)(1), in that it solicited the employees to revoke their union author-

[1] "Tr." refers to the stenographic transcript of testimony, and "GCX" to the exhibits introduced by the General Counsel, at the Board hearing.

ization cards (Pet. App. 12). The Board entered an appropriate remedial order (Pet. App. 15, 50-52).

The court of appeals sustained the Board's findings and enforced its order (Pet. App. 1-9). The court held that (Pet. App. 8):

> The Board's finding that the Company's letter of May 20, 1968, violated Section 8(a)(1) is completely consistent with the established rule that an employer cannot engage in conduct calculated to erode employees' support for the union. * * *

ARGUMENT

The only issue raised in the petition—whether the Company could non-coercively "inform" its employees of their right to revoke their union authorization cards (Pet. 3)—is not presented on this record. The Board found, and the court of appeals agreed, that the Company's action—enclosing postcards, stamped and addressed to the Board, which the employee had only to sign and mail—constituted more than informing its employees of their rights. Rather, it in effect solicited the employees and furnished them with an instrument with which to nullify their selection of the Union. It is well settled that this type of employer

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The Board rejected the Company's explanation that its letter was in response to the Union's action in coercing employees to sign the cards. The Board found that (Pet. App. 46):

> these incidents [relied on by the Company] had no quality of coercion or intimidation and were of a most trivial nature. It would be hard to imagine an election in which there were nearly 300 participating employees, where there occurred less coercion and harassment than in this election. * * *

action violates Section 8(a)(1) of the Act. There is thus no occasion for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1972.

See, e.g., National Labor Relations Board v. Birmingham Publishing Co., 362 F. 2d 2, 7 (C.A. 5); *Amalgamated Clothing Workers v. National Labor Relations Board (Winfield Mfg. Co.)*, 121 F. 2d 818, 821–825 (C.A. D.C.); *National Labor Relations Board v. J.C. Britton Co.*, 332 F. 2d 797, 798–799 (C.A. 9); *National Labor Relations Board v. Elias Bros. Big Boy, Inc.*, 327 F. 2d 421, 422 (C.A. 6).

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